In the Supreme Court of the United States

OCTOBER TERM, 1943.

No. [redacted]38

THE HOOVEN & ALLISON COMPANY,
a Corporation,
Petitioner,

vs.

WILLIAM S. EVATT,
Tax Commissioner of Ohio,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO,
and
BRIEF IN SUPPORT THEREOF.

LUTHER DAY,
Union Commerce Building,
Cleveland, Ohio,

THOMAS C. LAVERY,
Union Commerce Building,
Cleveland, Ohio,

MARCUS E. McCALLISTER,
Citizens National Bank Building,
Xenia, Ohio,
Counsel for Petitioner.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 5647

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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, The Hooven & Allison Company, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio, affirming a decision of the Board of Tax Appeals of Ohio, denying petitioner's claim to immunity from general property taxation under Article I, Section 10, Clause 2, of the Constitution of the United States:

OPINIONS BELOW.

The opinion of the Board of Tax Appeals of Ohio is reported in 26 Ohio Opinions 25 (1943); and that of the Supreme Court of Ohio in 126 Ohio St. 235, 51 N. E. (2d) 723 (1943). These opinions are reprinted in the record, at pages 94 and 104 respectively.

JURISDICTION.

The judgment of the Supreme Court of Ohio was entered on November 24, 1943 (R. 103). Application for rehearing was filed on December 7, 1943 (R. 119), and denied on December 15, 1943 (R. 103). The jurisdiction of this Court is invoked under Title 28, Section 344, paragraph (b), United States Code (Section 237, Judicial Code, as amended). *Citizens National Bank of Cincinnati v. Durr*, 257 U. S. 99, 42 S. Ct. 15, 66 L. Ed. 149 (1921); *Dahnke-Walker Milling Company v. Bondurant*, 257 U. S. 282, 42 S. Ct. 106, 66 L. Ed. 239 (1921).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

Article I, Section 10, Clause 2, of the Constitution of the United States, and the pertinent provisions of the General Code of Ohio are set forth in the Appendix, pp. 20-22.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

Petitioner buys fibers from producers in foreign countries for use in the manufacture of rope and similar products at its plant at Xenia, Ohio. The contracts specify the grade, quantity, price, and time of shipment of the fibers (which frequently have not been grown); and they often include the name of the carrier designated by the petitioner. When ready for shipment, the goods are appropriated to a particular contract, and petitioner is then notified of the name of the vessel, the number of bales shipped, and the approximate date of arrival in the United States. Upon arrival the goods are cleared through the customs by agents of the seller, weighed, and shipped by rail under straight bills of lading to Xenia, Ohio, where they are delivered to petitioner. In the course of business between the parties payment is not actually made until

the final invoice is received from ten to fifteen days after the goods have been delivered, notwithstanding a clause in the contracts that it shall be made on delivery on dock at destination, title to remain in the sellers until the goods are fully paid for.

During the years involved in this case, the fibers upon which the state of Ohio seeks to impose a general property tax were held by petitioner in its warehouses in the original packages in which they were imported. A part of the fibers so held were imported from the Philippine Islands.

THE QUESTIONS PRESENTED.

The questions presented are:

(1) Was petitioner the importer of the fibers brought into the United States from foreign countries pursuant to the contracts and course of business between it and foreign producers within the purview of Article I, Section 10, Clause 2, of the Constitution of the United States;

(2) Assuming that petitioner was the importer, were its imports immune from general property taxation by the state of Ohio while they remained in its warehouses in the original packages in which they were imported, under the limitation upon state taxing power contained in Article I, Section 10, Clause 2, of the Constitution of the United States; and

(3) Were the fibers brought into the United States from the Philippine Islands imports within the meaning of that term as used in Article I, Section 10, Clause 2, of the Constitution of the United States.

REASONS RELIED UPON FOR THE ALLOWANCE OF A WRIT OF CERTIORARI.

1. In holding that petitioner was not an importer within the purview of Article I, Section 10, Clause 2, of the Constitution of the United States, the Supreme Court of

Ohio has decided a federal question of substance not heretofore determined by this Court. *Waring v. The Mayor of Mobile*, 8 Wallace 110, 19 L. Ed. 342 (1868), where the question, who is an importer, was considered by this Court, is, it is submitted, distinguishable from the instant case on its facts (Petitioner's brief, herein, p. 14).

2. In sustaining the power of the State of Ohio to impose a general property tax upon petitioner's fibers while they remained in its warehouses in the original packages in which they were imported, notwithstanding the limitation upon state taxing power contained in Article I, Section 10, Clause 2, of the Consfitution of the United States, the Supreme Court of Ohio has decided a federal question of substance in a way probably not in accord with the "original package" doctrine as declared by this Court in *Brown v. The State of Maryland*, 12 Wheaton 419, 6 L. Ed. 678 (1827), and followed in *Low v. Austin*, 13 Wallace 29, 20 L. Ed. 517 (1871).

3. In declining to determine whether or not fibers brought into the United States from the Philippine Islands are imports within the meaning of that term as used in Article I, Section 10, Clause 2, of the Constitution of the United States, the Supreme Court of Ohio has failed to decide a federal question of substance appropriately presented for decision to it by the record in this case which has not heretofore been determined by this Court. The cases decided by this Court in which the status of the Philippine Islands has been involved have considered only their relation to the United States, *The Case of the Fourteen Diamond Rings*, 183 U. S. 176, 22 S. Ct. 59, 46 L. Ed. 138 (1901); *Cincinnati Soap Company v. United States*, 301 U. S. 308, 57 S. Ct. 764, 81 L. Ed. 1122 (1937). The relation between the Philippine Islands and a state of the United States has not heretofore been determined by this Court; nor has the theory of the so-called Insular Cases,

De Lima v. Bidwell, 182 U. S. 1, 21 S. Ct. 743, 45 L. Ed. 1041 (1901), and *Downes v. Bidwell*, 182 U. S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901), ever been applied to facts such as are here presented.

In support of the foregoing grounds of application for a writ of certiorari petitioner submits the accompanying brief.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Court directed to the Supreme Court of Ohio, commanding that Court to certify and send to this Court, on a day certain to be named therein, a full and complete transcript of the record of the proceedings in case numbered 29531, entitled on its docket "The Hooven and Allison Company v. William S. Evatt," to the end that the cause may be reviewed and determined by this Court as provided by law, that the judgment may be reversed with costs, and for such other and further relief as may be appropriately granted in the premises.

LUTHER DAY,
THOMAS C. LAVERY,
MARCUS E. MCCALLISTER,
Counsel for Petitioner.

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No. . . . . .

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a Corporation,
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vs.

WILLIAM S. EVATT,
Tax Commissioner of Ohio,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The petition for a writ of certiorari refers to the opinion of the Court below, the decision of the Board of Tax Appeals of Ohio, the grounds upon which jurisdiction is invoked, and the pertinent constitutional and statutory provisions. It also sets forth a summary statement of the matter involved and states the questions presented.

STATEMENT OF THE CASE.

The facts of the case as disclosed by the amended assessment certificates of valuation and distribution (R. 4A, 4B, 4C), notice of final determination (R. 2), notice of appeal (R. 1), and the transcript of proceedings and testimony (R. 33-89), are as follows:

Petitioner is a a corporation organized under the laws of the state of Ohio in 1888, with its principal place of business at Xenia, Ohio (R. 38). It is engaged in the business of manufacturing rope, twine, packing, binder twine,

and similar products (R. 39). The raw material which it uses in its manufacturing operations consists of manila hemp from the Philippine Islands; Java sisal from the Dutch East Indies; African sisal from British and Portuguese East Africa; Mauritius hemp from the Island of Mauritius; jute from India; and soft hemp from Italy, the Balkan States and South America; domestic binders, sisal, or henequen from Cuba and Mexico; and istle from Cuba (R. 39).

The course of business by which raw material is obtained is as follows: Petitioner buys substantially all of its fiber from foreign producers represented by brokers who have their offices in the city of New York (R. 39, 63-88B). These brokers make frequent offers of fiber to petitioner; or, when it is in the market for fiber, it communicates with the brokers, usually by telegraph or telephone, infrequently by letter. When a certain grade of fiber is sought, petitioner asks the broker handling that grade for a quotation. If the price quoted is higher than petitioner is willing to pay, it makes an offer which is cabled by the broker to his principal in a foreign country; and upon receipt of an acceptance from the principal the broker prepares and forwards to petitioner a contract in duplicate signed by the broker as agent on behalf of his principal. Upon receipt of the contract it is signed by petitioner and one copy is returned to the broker in New York (R. 39-40). Such a contract covers the quantity, price and time of shipment, and frequently a designation by petitioner of the steamship company upon whose vessel the fiber is to be shipped (R. 40, 47).

There are many grades of fiber and contracts of purchase almost invariably specify the grade and the estate from which it comes (R. 58). Frequently the fiber specified in a particular contract has not been grown when the contract is signed (R. 40). Many of the sources of fiber are in remote parts of the earth and from three to six months

may be required for the transit from the point of shipment to the point of destination at Xenia, Ohio (R. 42).

When the fiber is loaded on board the vessel at the point of origin, petitioner receives from the broker in New York a declaration setting forth the name of the vessel, the number of bales shipped, and the approximate date of arrival in the United States (R. 40); and this is followed, about the time the fiber arrives at the port of entry, by a *pro forma* invoice which gives the approximate tonnage and value of the shipment (R. 40). The fiber is then brought through the customs, weighed, and shipped by rail under a straight bill of lading to Xenia, Ohio (R. 40), where it is delivered by the carrier to petitioner (R. 41). Later, within ten or fifteen days after the receipt of final invoice, the purchase price is paid (R. 42).

At the time the fiber is loaded on board ship in a foreign port it is earmarked for petitioner (R. 40) in such a way as to show that the shipment is being made to fulfill the requirements of a particular contract. Neither a property interest in nor a power of disposition over the goods to secure the payment of the price is reserved by the seller, either by the form of the bill of lading or otherwise, since sales to petitioner are, as heretofore stated, credit sales (R. 42, 78).

While petitioner does not purchase its fibers c.i.f. (R. 61), the price it pays for the goods is known as a "landed price" which includes the cost of fiber at the point of origin, plus normal ocean freight charges, insurance, clearance through the customs, and the expense of arrangement for transshipment to Xenia, Ohio (R. 41, 58, 59, 61, 78-79). No duty is imposed on any of the fibers imported except true hemp (R. 41), and in that case petitioner always buys its fiber duty paid (R. 41). Petitioner pays the railroad freight charges from the port of entry in the United States to Xenia, Ohio (R. 59), and also the premium on increased-value and war-risk insurance. In fact, any variance

beyond the normal cost of freight, insurance, etc., is for the petitioner's account (R. 58-59).

The New York brokers with whom petitioner deals in purchasing fiber are in no sense its agents and it does not pay them any compensation for the services they render in clearing the fiber through the customs, for having it weighed, or for arranging for its transshipment by rail to Xenia, Ohio, since it is understood that the cost of such services is included in the contract price (R. 62).

When the fiber reaches Xenia, Ohio, it is delivered to petitioner, placed in its raw-material warehouses and held there until needed in its processing operations (R. 42). While in the warehouses the fiber remains in the original packages in which it is received from abroad, i.e., in bales ranging from 200 to 1,000 pounds in weight, which are sometimes covered with reed and bound with steel bands, and sometimes merely bound without a covering (R. 43).

While the bales remain in the raw-material warehouses they are carried in a raw-material account on petitioner's books (R. 42, 43); but upon their removal from such warehouses they are immediately charged to the goods-in-process account, whether the bales have been broken or not (R. 43). No use whatever is made of the bales of fiber while they remain in the raw-material warehouses (R. 45); and they are never pledged as collateral to secure the repayment of bank loans (R. 44).

Three buildings are used by petitioner as raw-material warehouses, in two of which fiber in the original packages only is stored. In the third, both raw material and finished goods are stored, but they are kept in separate rooms, in compliance with provisions of petitioner's insurance policies (R. 49, 50). Petitioner rarely makes a spot purchase, i.e., a purchase of fiber which is in the United States at the date of purchase, less than one-tenth of one percent of its usual inventory ever having been purchased in that manner (R. 50).

While the terms of fiber contracts between petitioner and the producers of fiber in foreign countries provide that equivalent delivery may be made from ship or store at seller's option, that payment is to be made in New York funds on delivery on dock at destination, and that title is to remain in the seller until the goods are fully paid for, the sellers with whom petitioner deals do not require it to comply with these terms (R. 72, 74A, 78, 83, 84, 84A, 87, 88A). On the contrary, petitioner has never received a delivery of fiber from stock on hand in the United States (R. 53), has never paid the price of the goods until after they have been delivered to it at Xenia, Ohio (R. 42); and the sellers have never reserved any security interest in or power of disposition over the goods when they are shipped, either by the form of the bill of lading or otherwise (R. 41).

Petitioner has never rejected a shipment of fiber, even though it makes no inspection at the port of entry. Should a shipment be found to be inferior upon inspection at Xenia, Ohio, petitioner would accept it and file a claim against the seller; and if such claim were not adjusted to its satisfaction, the matter would be referred to arbitration pursuant to a clause in the sales contract (R. 60).

The course of business herein described was the regular course of business of petitioner and its suppliers during the years now under consideration; and it is the usual course of business of the industry in which it is engaged (R. 53).

SPECIFICATIONS OF ERROR.

The Supreme Court of Ohio erred

(1) in denying petitioner's claim that it was an importer within the purview of Article I, Section 10, Clause 2, of the Constitution of the United States;

(2) in sustaining the power of the state of Ohio to impose a general property tax upon petitioner's fibers while they remained in its warehouses in the original packages in which they were imported, notwithstanding the limitation

upon such power contained in Article I, Section 10, Clause 2, of the Constitution of the United States; and

(3) in declining to determine whether or not fibers brought into the United States from the Philippine Islands were imports within the meaning of that term as used in Article I, Section 10, Clause 2, of the Constitution of the United States.

SUMMARY OF ARGUMENT.

I.

The fibers in petitioner's inventory were imports within the meaning of that term as used in Article I, Section 10, Clause 2, of the Constitution of the United States; and while they remained as such in petitioner's warehouses in the original packages in which they were imported they were immune from taxation by the state of Ohio.

II.

The fibers brought into the United States from the Philippine Islands were imports within the meaning of that term as used in Article I, Section 10, Clause 2, of the Constitution of the United States.

ARGUMENT.

In listing its inventory for general property taxation in the state of Ohio as required by Sections 5371 and 5378, General Code of Ohio (Appendix pp. 20-22), petitioner omitted certain fibers on the ground that as imports they were immune under the limitation upon state power contained in Article I, Section 10, Clause 2, of the Constitution of the United States as interpreted by this Court in *Brown v. The State of Maryland*, 12 Wheaton 419, 6 L. Ed. 678 (1827), in which the original package doctrine was announced by Chief Justice Marshall, and in *Low v. Austin*, 13 Wallace 29, 20 L. Ed. 517 (1871), in which it was re-

affirmed. The Supreme Court of Ohio denied petitioner's claim on two grounds as shown by the syllabus[1] of its decision, which reads as follows (R. 104):

> "1. Where an Ohio corporation contracts to purchase fibers grown in a foreign country at a landed price at port of entry in this country, with title to remain in the seller until goods are paid for, and such fibers are transshipped by seller's agent from port of entry to purchaser in Ohio, such Ohio corporation is not an importer.
>
> "2. The state has the power to levy a general property tax on imported goods so long as such tax does not intercept the import in its way to become incorporated with the general mass of property or deny to the import the privilege of becoming so incorporated until it shall have contributed to the revenue of the state."

In short, the Supreme Court of Ohio held that petitioner was not the importer of the fibers sought to be taxed and that it was, therefore, ineligible to claim immunity from state taxation; but, granting that petitioner was the importer, the immunity from state taxation attaching to the fibers as imports had been lost by their incorporation into the general mass of property in the state.

[1] In Ohio, the syllabus of a decision of the Supreme Court is prepared by the judge assigned to write the opinion, and in all cases receives the assent of a majority. Accordingly, it is the rule that the syllabus states the law with reference to the facts upon which it is predicated. *The Baltimore & Ohio Railroad Company v. Baillie et al.*, 112 Oh. St. 567, 570, 148 N. E. 233 (1925).

I.

A.

The fibers in petitioner's inventory were imports within the meaning of that term as used in Article I, Section 10, Clause 2, of the Constitution of the United States.

The only case in which the question, who is an importer, has been considered by this Court is *Waring v. The Mayor of Mobile*, 8 Wallace 110, 19 L. Ed. 342 (1868). That case involved the legality of a tax imposed by an ordinance of the city of Mobile upon merchants and traders of the city. Waring was fined for non-payment of the tax and he brought suit to restrain the collection of the fine, alleging that he was exempt from the tax on the ground that the sales made by him were of merchandise in the original packages, as imported from a foreign country, and which was purchased by him, in entire cargoes, of the consignees of the importing vessels before their arrival, or while the vessels were in the lower harbor of the port. He obtained a decree in the trial court which was reversed by the Supreme Court of the State of Alabama. A writ of error was sued out from this Court and the decree was affirmed. The Court said (pp. 119-120):

> "Undoubtedly goods at sea may be sold by the consignees to arrive, and if they indorse and deliver the bill of lading to the purchaser, and he accepts the same under the contract as the proper substitute for the actual delivery and acceptance of the goods, the effect of the transaction is to vest a perfect title in the purchaser, discharged of all right of stoppage *in transitu* on the part of the vendor and indorser of the bill of lading.
>
> "Nothing of the kind, however, was done in this case. On the contrary, the agreement was, that the loss, if before the delivery of the goods into the lighters, should fall on the shippers. Influenced by these considerations the court is of the opinion that the shippers or consignees were the importers of the sale, and

that the complainant was the purchaser of the importers, and the second vendor of the imported merchandise."

In holding that petitioner was not the importer of the fibers involved in this case, the Supreme Court of Ohio has bottomed its decision on the proposition that the sale of the fibers to petitioner occurred after they had arrived in this country because the contracts for their purchase provided that title should remain in the seller until the goods were fully paid for, notwithstanding the uncontradicted evidence of record that this provision of the contract, as well as others, was not adhered to by the parties and that the sales in fact were made on credit. (R. 42, 52, 69, 72, 78, 84, 87).

The question is, therefore, whether the issue of petitioner's status as importer or not is to be determined under the technical rules of the law of sales applied to the form of the purchase contracts which, as the record shows, had no significance in the actual course of business between the parties; or on the basis of the realities of that course of dealing. In the *Waring* case the buyer had made no contract with the seller in a foreign country which specified the kind and quality of goods to be produced; which called upon the seller to deliver goods earmarked for the buyer to a carrier designated by the buyer; or which initiated and sustained a movement in foreign commerce ending only when the goods were unconditionally delivered to the buyer at his door. In this case all these salient factors are present and they unite as component parts of the course of business which from the time the contracts were entered into until they were performed by the delivery of the goods to petitioner at Xenia, Ohio, necessarily involved the introduction of fibers into this country from many foreign sources. Thus, it was petitioner's need for fibers which caused it to contract for such raw material with sellers in many foreign countries, thereby setting in motion a series

of events, each of which was an integral step toward the accomplishment of the single purpose of procuring raw material for shipment across the seas and delivery to petitioner's plant at Xenia.

The whole problem was summed up by the witness, R. L. Pritchard, one of the brokers from whom petitioner buys, when he said:

> "The entire movement of the goods from first to last is the result of the order placed by H. & A." (Petitioner's Exhibit 1, R. 70.)

Manifestly, the *Waring* case is not a precedent for the rejection of petitioner's claim that it was an importer, and there is presented, therefore, a federal question of substance not heretofore decided by this Court.

B.

While the fibers remained as imports in petitioner's warehouses in the original packages in which they were imported they were immune from taxation by the state of Ohio.

Article I, Section 10, Clause 2, of the Constitution of the United States reads in part as follows:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: * * *"

Chief Justice Marshall, in *Brown v. The State of Maryland, supra*, thus stated the original package doctrine:

> "It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the state; but while remaining the property of the importer, in his warehouse, in the original form or pack-

age in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the constitution."

It is the article itself to which the immunity attaches and whether it is in transit or is at rest, so long as it is in the form and package in which imported and in the custody and ownership of the importer, the state may not tax it. *Low v. Austin*, 13 Wallace 29, 20 L. Ed. 517 (1871). As indicated by the second paragraph of the syllabus of the Supreme Court of Ohio in this case, it concluded that, admitting that petitioner was the importer and that the fibers remained in its hands in the original packages in which they were imported, they had upon coming to rest in petitioner's warehouses become incorporated into the general mass of property in the state of Ohio because the purpose of importation was to use them as raw material in petitioner's manufacturing processes before their sale as finished products, rather than to sell them in the condition in which they were imported. Such an interpretation of this constitutional limitation is not supported by the decisions of this Court, and it is contrary to the inference which may be drawn from *McGoldrick v. Gulf Oil Corporation*, 309 U. S. 414, 60 S. Ct. 664, 84 L. Ed. 840 (1940), where it was assumed without decision that crude oil would *upon its manufacture*, become a part of the common mass of property in the state and thereafter lose its distinctive character as an import and its constitutional immunity as such from state taxation.

Accordingly, it is respectfully submitted, the record in this case presents a federal question of substance which has been decided by the Supreme Court of Ohio in a way probably not in accord with the decisions of this Court.

II.

The fibers brought into the United States from the Philippine Islands were imports within the meaning of that term as used in Article I, Section 10, Clause 2 of the Constitution of the United States.

Because of its holding that petitioner was not an importer, the Supreme Court of Ohio found it unnecessary to determine whether fibers brought from the Philippine Islands were imports.

Determination of whether or not goods brought into the United States from the Philippine Islands can under any circumstances be held to be imports within the meaning of that term as used in Article I, Section 10, Clause 2, of the Constitution of the United States, depends upon the meaning to be ascribed to it. If the term means goods brought to the United States from a point of origin outside the boundaries of the forty-eight states comprising the Federal Union, e.g., the open sea, then the nature of the political relation of the Philippine Islands to the state of Ohio is immaterial. If, however, the term imports means goods brought into the United States from a foreign country, the question whether or not the Philippine Islands are a foreign country as to the state of Ohio must be considered.

The relation of the Philippine Islands to the United States as a sovereign nation was before this Court in *Fourteen Diamond Rings v. United States*, 183 U. S. 176, 22 S. Ct. 59, 46 L. Ed. 138 (1901) and *Cincinnati Soap Company v. United States*, 301 U. S. 308, 57 S. Ct. 764, 81 L. Ed. 1122 (1937), in each of which it was held that as to the United States, the Philippine Islands were not foreign territory. The general question of the relation of ceded territory to the United States was elaborately considered in the Insular Cases, *De Lima v. Bidwell*, 182 U. S. 1, 21 S. Ct. 743, 45 L. Ed. 1041 (1901), and *Downes v. Bidwell*,

182 U. S. 244, 21 S. Ct. 770, 45 L. Ed. 1088 (1901), and was explored by writers in legal periodicals at the turn of the century. See *Langdell*, "The Status of Our New Territories," 12 Harvard Law Review 365 (1899); *Thayer*, "Our New Possessions," ibid. 464 (1899); *Thayer*, "The Insular Tariff Cases in the Supreme Court," 15 Harvard Law Review 164 (1901); *Littlefield*, "The Insular Cases," 15 ibid. 169, 281 (1901). A more recent article in which the subject has been considered is *Fisher*, "The Status of the Philippine Islands under the Independence Act," 19 American Bar Association Journal 465 (1933). However, in none of these cases has the question of the political relation of the Philippine Islands to a state of the United States been passed upon. It has been held that while for all national purposes embraced by the Federal Constitution the states of the Union are one, united under the same sovereign authority and governed by the same laws, in all other respects they are necessarily foreign to and independent of each other. *Buckner v. Finley & Van Lear*, 2 Peters 586, 7 L. Ed. 528 (1829); *Bank of United States v. Daniel*, 12 Peters 32, 54, 9 L. Ed. 989 (1838). If, therefore, the states are foreign to each other, it is not unreasonable to urge that they are foreign to the Philippine Islands as a dependency of the United States. Thus, there is appropriately presented for decision a federal question of substance which has not heretofore been determined by this Court.

Respectfully submitted,

LUTHER DAY,
THOMAS C. LAVERY,
MARCUS E. MCCALLISTER,
Attorneys for Petitioner.

APPENDIX.

Constitutional Provision.

Article I, Section 10, Clause 2, of the Constitution of the United States:

"No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress."

Statutory Provisions.

Section 5371, General Code of Ohio:

"Personal property used in business shall be listed and assessed in the taxing district in which such business is carried on. If such business is carried on in more than one taxing district in the same county, the return shall set forth the amount of the property used therein which is situated in each taxing district in such county, and the value of the whole of the personal property used in business shall be apportioned to and assessed in each of such taxing districts in proportion to the value of the personal property situated therein. Domestic animals not used in business shall be listed and assessed in the taxing district where kept. Ships, vessels, boats and aircraft, and shares and interests therein, shall be listed and assessed in the taxing district in which the owner resides. All other taxable property shall be listed and assessed in the municipal corporation in which the owner resides, or, if the owner resides outside a municipal corporation, then in the county in which he resides, excepting as otherwise provided in this chapter. Whenever, under any provisions of this chapter, taxable property, required by this section to be listed and assessed in the taxing district or county in which the owner thereof resides, is required to be listed by a fiduciary, such property shall

be listed and assessed by such fiduciary in the taxing district or county in which such fiduciary resides, or, in the case of joint fiduciaries, in which either such fiduciary resides; but such property belonging to the estate of a deceased resident of this state shall be listed and assessed in the taxing district or county in which he resided at the time of his death regardless of the residence of his executors, administrators or personal representatives, and such property belonging to a ward, minor, insane person, or beneficiary of a trust, residing in this state, title, custody or possession of which is vested in a non-resident fiduciary, shall be listed and assessed in the taxing district or county in which such ward, minor, insane person or beneficiary resides."

Section 5378, General Code of Ohio:

"A corporation having taxable property required to be listed in more than one county shall make a combined return to the commission, listing therein all its taxable property in this state, conformably to all the provisions of this chapter, but it shall not assign its property of the kinds mentioned in section 5328-1 of the General Code, to any particular taxing district or districts, or county or counties. The commission shall assess the personal property of such corporation in the several taxing districts in which it is required by this chapter to be assessed, and shall issue assessment certificates therefor to the proper county auditors at the time and in the manner required by this chapter. All other property of such corporation, required to be so listed, shall be entered on the intangible property tax list in the office of the auditor of state and duplicate thereof in the office of the treasurer of state and taxed under section 5638-1 of the General Code. The commission shall assess all such other property of each such corporation and, on or before the third Monday of May, annually, shall certify the total value or amount of each kind or class thereof, to the auditor of state who shall enter same on the intangible property tax list in his office in the

manner provided in chapter four of this title. Excepting as otherwise expressly provided in this section, all the provisions of this chapter shall apply to and govern such corporation, its proper officers and representatives, the commission and the county auditor with respect to all proceedings in the assessment of the property of such corporation."